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No. 10-1260

Supreme Court, U.S.
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# In the Supreme Court of the United States

Clinton Gard,
Patricia Gard,
Petitioners

vs

City of Omaha,
Respondent

On Petition for Writ of Certiorari to the Nebraska Court of Appeals

## Petition for Rehearing

Clinton and Patricia Gard
Pro Se Petitioners
931 N 121 St.
Omaha, NE 68154
(402) 342-3150

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## PETITION FOR REHEARING

Pursuant to Rule 44.2 Petitioners respectfully petition for rehearing of the Court's Order denying certiorari in this case.

**THIS PETITION SHOULD BE GRANTED DUE TO CONFLICTS OF INTEREST THAT EXISTED WHILE DENYING PETITION FOR WRIT OF CERTIORARI.**

28 U.S.C. §455 provide standards for judicial disqualification or recusal. Section 455, captioned "Disqualification of justice, judge, or magistrate judge," provides that a federal judge "shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." The same section also provides that a judge is disqualified "where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding"; "has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding."

On June 13, 2011 this Court denied the Petition for Writ of Certiorari. The following day Petitioners became aware of the following conflicts of interest that create intervening circumstances of a substantial or controlling effect:

1. Justice Clarence Thomas has very close family ties to the engineering firm of Lamp, Rynearson & Associates, Inc.[1] who designed the intersection improvements at issue within this case on behalf of the City of Omaha, West Corporation, Silvercrest Development, Inc., Miracle Hills Park Assn., & Miracle Hills VI L.P. (T171-187) (App 81).

2. Justice Thomas' wife, Virginia Lamp Thomas worked as legislative director for Congressman Hal Daub, a "friend of the Lamps"[2]. Mr. Daub as mayor was named as a defendant along with Respondent City of Omaha in *Waite v. City of Omaha, Douglas Co District Court 1001-116, also Nebr Supreme Court S01-193)* involving the development agreement that included the intersection improvements at issue within the Petition for Writ of Certiorari. Mr. Daub is also a lobbyist for West Corporation, a party to the development agreement. Documents pertaining to this lawsuit were withheld by Respondent Omaha

[1] Sue Story Truax. (11/18/2009) Donald Lamp Known for His Vision. Omaha World Herald. Omaha.com/article/20091118/NEWS01/711189923

[2] Laura Blumenfeld (9/10/1991) The Nominee's Soul Mate. Washington Post. http://www.washingtonpost.com/wp-srv/national/longterm/cult/lifespring/main.htm See also Paul Richter (10/13/1991) Virginia Thomas: Los Angeles Times. http://articles.latimes.com/1991-10-13/news/mn-1053_1_clarence-thomas ; and Virginia Lamp Thomas. Wikipedia. http://en.wikipedia.org/wiki/ Virginia _Lamp _Thomas

in violation of court ordered discovery that was ongoing at the time summary judgment was granted in favor of Defendant/Respondent City of Omaha. (App. 51-64)

3. Justice Thomas did not recuse himself or indicate that he took no part in the consideration or decision of this case.

**THIS PETITION SHOULD BE GRANTED BECAUSE THE DENIAL OF CERTIORARI IN THIS CASE CONDONES AND ENCOURAGES FUTURE VIOLATIONS OF DUE PROCESS RIGHTS BY THE LOWER COURTS.**

The issues raised within Petitioners' Petition for Writ of Certiorari address a decision of the lower courts that conflicts with the opinion of the United States Supreme Court *Celotex Corp. v. Catrett 477 U.S. 317, 106 S.Ct. 2548* and with other state court of appeals. (Petition Pgs 10-12, Reply Brief Pgs 4-7)

A review of the full record, transcript of hearing, the Order and Opinion plainly reveals that the lower courts and Respondent City of Omaha worked in tandem to suppress evidence by not disputing, acknowledging, analyzing or applying certain material facts on the record and related law within any argument, order or opinion within this case at any time despite these facts being raised multiple times by Petitioners before the lower courts within pleadings and during oral argument.

(Reply Brief Pgs 10-12) The denial of certiorari results in this Court's approval of the Nebraska Court of Appeals and the District Court acting in a manner that constitutes a radical departure from the usual course of judicial proceedings.

**THIS PETITION SHOULD BE GRANTED BECAUSE THE DENIAL OF CERTIORARI IN THIS CASE CONDONES AND ENCOURAGES FUTURE VIOLATIONS OF DUE PROCESS RIGHTS BY MUNICIPALITIES.**

The denial of certiorari condones the abuse of Petitioners' due process rights beginning with Respondent's violating their own statutory notice laws and withholding knowledge of a possible claim and dangerous conditions prior to Petitioners becoming aware of their damages.

If Petitioners had the opportunity to sign the petition for street improvements as record owners of abutting property as required by law (*Examination of petition. Omaha Mun. Code 1980, §26-59 See App. 27)* and had the opportunity to attend hearings regarding the improvements, (*Publication of Notice. Omaha Mun. Code 1980 §26-60 See App. 27)* Petitioners would have opposed the plans and had an opportunity to be heard, negotiate changes to improve safety, or even prevent the improvements and subsequent heavy traffic volume increases from occurring. The first accident occurred at the very time that was discussed at a hearing not disclosed to Petitioners

or the public as being the beginning of the highest volume of traffic due to the new traffic volume of the business expansion combined with overflow traffic from the Dodge Street overpass project.

Petitioners should have had the opportunity to respond to a statements at the hearing regarding the coming "crush of traffic" (Audio T336-337) as all westbound traffic out of the business/ retail area proceeds directly toward our property on the level.

"The essence of due process is that a person be given notice and an opportunity for hearing." *Mathews v. Eldrige, 424 U.S 319, 348(1976.)*

Respondent repeatedly misrepresented that the federal government prohibited changes to the intersection even after a second accident occurred, then for several months appeared to be engaged in working toward a solution with a state committee before abruptly walking away stating there was no solution to the problem. The City acknowledged by their actions the existence of dangerous conditions and their intent to remedy by starting to work towards a solution.

Respondent makes false statements numerous times, even within an affidavit, that city engineers designed the intersection changes. The development agreement and hearing (T171-187, T335-336 audio) clearly show plans are designed by Lamp Rynearson and presented to the City by an attorney representing West Corporation. The lower courts were aware of misrepresentation occurring in their courtrooms with no consequence and Respondent still attempts to perpetuate this lie before the United States Supreme Court within

their Brief of Respondent in Opposition for A Writ of Certiorari, Pg 12, No. 26.

Under these circumstances the complete denial of injunctive relief, compensation for damages, even a fair trial has far reaching consequences by setting improper precedence that emboldens elected officials and governmental employees to further disregard the law.

**THIS PETITION SHOULD BE GRANTED BECAUSE DENYING CERTIORARI LEAVES A FAR REACHING QUESTION UNANSWERED WHETHER SUMMARY JUDGMENT CAN EVER BE ACCEPTABLE DURING COURT ORDERED DISCOVERY WITH NO FURTHER HEARINGS, INSTRUCTIONS, MOTIONS, OR STIPULATIONS.** Reply Brief Pages 2 – 5.

**IT APPEARS THAT JUSTICE THOMAS HAS A CONFLICT OF INTEREST IN THIS CASE, AS WELL AS BEING THE CONFLICT OF INTEREST OF THE LOWER COURTS IN THIS CASE.**

It can be a reasonable assumption that the Respondent City of Omaha, the Douglas County District Court, the Nebraska Court of Appeals, and the Nebraska Supreme Court were aware of close associations between Justice Thomas, Lamp Rynearson & Associates, Hal Daub, and West Corporation in connection with the development agreement that included the intersection improvements abutting Petitioners' property.

There is an overwhelming appearance of Justice Thomas having a conflict of interest in this case, as well as actually being the conflict of interest of the lower courts. Certainly this extraordinary circumstance can be a reasonable explanation for the "disappearing facts" (Petition Pgs 3-6, Reply Brief Pgs 10-12, the abrupt, premature granting of summary judgment during court ordered discovery, and the Nebraska Court of Appeals denial of Petitioners' reasonable requests to reinstate appeal and amend our Petitions for Further review and to Stay the Mandate upon the discovery of a previous lawsuit directly tied to the same intersection improvements that abut our property that was withheld in violation of court ordered discovery.

"The essence of due process is that a person be given notice and an opportunity for hearing." *Mathews v. Eldrige, 424 U.S 319, 348(1976); R.R.S. 1943, §14-390*

For the foregoing reasons this Petition for Rehearing should be granted.

Respectfully submitted,

/s/ Clinton C. Gard
/s/ Patricia Gard
931 N 121 St.
Omaha, NE 61854 (402) 342-3150

## CERTIFICATE

Pursuant to Rule 44(2) Petitioners hereby certify that the foregoing Petition for Rehearing is restricted to the grounds specified in this paragraph and submitted in good faith and not for purpose of delay.

/s/ Clinton C. Gard

/s/ Patricia Gard
931 N 121 St.
Omaha, NE 61854
(402) 342-3150